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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 650/2018

ROSHAN REAL ESTATES PVT. LTD.

..... Petitioner

Through: Ms.Anusuya Salwan, Ms.Nikita Salwan,
Adv.

versus

UNION OF INDIA

..... Respondent

Through: Mr.Jaswinder Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.10.2018

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the work of Construction of new office building at Supreme Court of India, New Delhi (SH-Civil and Internal Electrical Work)'awarded by the respondent in favour of the petitioner vide Letter of Acceptance dated 11.09.2012 and Letter of Award dated 25.09.2012.

2. Certain disputes having arisen between the parties in relation to the abovementioned work, the same were referred by this Court to the Sole Arbitrator vide order dated 02.06.2016 passed in Arbitration Petition No.659/2015 titled *M/s Roshan Real Estate Pvt. Ltd. vs. Union of India*.

3. While the arbitration proceedings are pending, the petitioner

had raised further claims and sought amendment on its Statement of Claim before the Sole Arbitrator. The Arbitrator by his order dated 01.06.2018 refused to allow such amendment of the Statement of Claim and advised the petitioner to seek reference of the additional claims. The petitioner, therefore, filed the present petition before this Court.

4. Counsel for the respondent submits that Clause 25 of the General Conditions of Contract (GCC) gives the complete Arbitration procedure whereunder the petitioner has to first raise its claim before the Engineer In-charge, who shall forward such claims to the Superintending Engineer for a decision. Based on the decision of the Superintending Engineer and upon being unsatisfied with it, the petitioner has to file an appeal before the Chief Engineer and if the petitioner remains unsatisfied with the decision of the Chief Engineer, raise such disputes before the Dispute Redressal Committee. It is only on being aggrieved of the decision of the Dispute Redressal Committee that the petitioner can seek appointment of an arbitrator. He submits that the petitioner has not followed the Arbitration procedure in respect of the additional claims before filing of the present petition and therefore, the present petition would not be maintainable.

5. Counsel for the petitioner on the other hand, submits that some of the claims as sought to be raised now are only an extension of the claims already pending adjudication before the Sole Arbitrator. She further submits that by following the procedure as laid down in Clause 25 of the GCC, the adjudication of the disputes would only get

delayed further and no useful purpose would be served by following the said procedure. She places reliance on the judgment of the Supreme Court in *Union of India & Ors. vs. U.P. State Bridge Corporation Ltd.* (2015) 2 SCC 52 to contend that in the interest of speedy conclusion of the arbitration proceedings, this Court can appoint an Arbitrator without the petitioner following the procedure as mentioned in clause 25 of the GCC.

6. I am unable to agree with the submissions made by the counsel for the petitioner. Apart from claim of the final bill, which may include certain portion of the disputes that are already pending adjudication before the Sole Arbitrator, there are various other claims also sought to be raised now, including that of escalation, loss and damages due to prolongation of contract, bonus/incentives, etc. These certainly do not form part of the reference made to the Arbitrator and are not pending adjudication before him.

7. This Court in *Ved Prakash Mithal & Sons vs. Delhi Development Authority & Anr.* 2018 SCC OnLine Del 9884 has held that the procedure prescribed in a clause similar to Clause 25 of GCC is mandatory in nature and, therefore, must be followed by the party before approaching the Court by way of an application under Section 11 of the Act. It was held as under:

“4. Section 11(6) of the Act would come into operation only where the other party fails to act as required under that procedure. The petitioner itself having not followed the procedure as prescribed in the Arbitration Agreement, cannot make a complaint against the respondent’s alleged failure to act in accordance with the same.”

8. In the present case, as the petitioner has not followed the due procedure prescribed in the contract, the petitioner itself being in default, cannot invoke the jurisdiction of this Court under Section 11 of the Act.

9. Counsel for the petitioner contends that following the procedure prescribed in Clause 25 would be a mere empty formality. I cannot at this stage, make any comment on the same. It is hoped that the respondent would not treat or make it as an empty-formality. Timelines prescribed therein shall be strictly followed by the parties so as to avoid any unnecessary delay. However, the mere apprehension of the petitioner cannot make the present petition maintainable.

10. The petition is, therefore, dismissed, with no order as to costs.

NAVIN CHAWLA, J

OCTOBER 12, 2018
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